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REMARKS

Claims 1-3 and 5-22 are pending in the present application. Claims 1, 5, 11, and 16 have been amended, leaving claims 1-3 and 5-22 for consideration.

Support for the amendments to the claims may be found in the specification, particularly the examples, and the claims as originally filed. Reconsideration and allowance of the claims is respectfully requested in view of the following remarks.

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 1-21 stand rejected under 35 U.S.C. § 102(e), as allegedly anticipated by U.S. Patent No. 6,346,574 to Nishihara, U.S. Patent No. 6,423,768 to Khouri, or U.S. Patent Application No. 2003/01395504 to Miebach. Applicants respectfully traverse these rejections.

1. U.S. Patent No. 6,346,574 to Nishihara (hereinafter "Nishihara")

Nishihara generally describes a fire retardance-imparting additive, which comprises a substituted aromatic vinyl resin having acid salt groups as the substituents on the aromatic rings. The fire-retarding additive can be blended with at least one thermoplastic resin and a fire retardant can also be blended with them, if necessary. Thus, the thermoplastic resin composition having flame retardancy as taught by Nishihara must contain a substituted aromatic vinyl resin having acid salt groups as the substituents on the aromatic rings.

Amended independent Claims 1, 11 and 16 recite a flame retardant composition consisting of an organophosphate and a polyhydric alcohol. Use of the language "consisting of" does not permit the inclusion of a fire retardance-imparting additive that comprises a substituted aromatic vinyl resin having acid salt groups as the substituents on the aromatic rings as taught by Nishihara.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987).

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Applicants respectfully assert that Nishihara cannot anticipate Claims 1, 11 or 16 because Nishihara does not teach a flame retardant composition consisting of an organophosphate and a polyhydric alcohol. Rather, Nishihara teaches compositions requiring a retardance-imparting additive of a substituted aromatic vinyl resin having acid salt groups as the substituents on the aromatic rings which falls outside the scope of the pending claims. Applicants request withdrawal of the rejection.

2. U.S. Patent No. 6,423,768 to Khouri (hereinafter "Khouri")

Khouri teaches polymer-organoclay composite compositions that generally include (A) at least one thermoplastic polymer bearing amine groups such as a polyamide, (B) at least one organoclay generally containing a quaternary ammonium ion including at least two alkyl or cycloalkyl groups, (C) a thermoplastic resin different from (A) such as polyphenylene ether, (D) an impact modifying agent, and (E) a compatibilizing agent. Khouri does disclose the use of polyphenylene ether but as a thermoplastic resin different from the thermoplastic polymer bearing amine groups (Col. 5, lines 30-44) making it clear that Khouri is largely directed to polyamide/polyphenylene ether blends. Khouri does not teach or suggest a polyphenylene ether resin/ polystyrene resin blend as is instantly claimed.

Accordingly, it is respectfully requested that the rejection be withdrawn as applied to Claims 1-3 and 5-21.

3. U.S. Patent Application No. 2003/01395504 to Miebach (hereinafter "Miebach")

Miebach generally describes flame retardant compositions that include at least one aromatic polycarbonate, at least one silicone source, at least one boron source, and optionally, at least one member selected from the group consisting of an anti-drip agent, a second thermoplastic resins which is not a polycarbonate, and a rubber modified graft copolymer. Miebach is directed to polycarbonate compositions and does not teach or suggest a polyphenylene ether/ polystyrene blend as is instantly claimed.

For at least this reason, it is respectfully request that the rejection under 35 USC

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§102(e) applied to Claims 1-3 and 5-21 be withdrawn.

B. Claims 1, 4, 6, 8-11, 13-16, and 18-21 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 6,150,443 to Nodera. Applicants respectfully traverse this rejection.

4. U.S. Patent No. 6,150,443 to Nodera (hereinafter "Nodera")

Nodera generally describes flame retardant polycarbonate compositions including a polycarbonate resin, a styrenic resin, a flame retardant, and an antistatic agent. Nodera fails to disclose a composition a polyphenylene ether resin and a polystyrene resin. In fact, Nodera fails to disclose polyphenylene ether at all. Because Nodera does not mention polyphenylene ether a thermoplastic Nodera cannot anticipate the amended claims. and withdrawal of the rejection under section 102 is now requested for at least this reason.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-21 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Nodera or Nishihara. Applicants respectfully traverse this rejection.

As discussed above with regard to the rejections under section 102, neither Nishihara nor Nodera disclose all the elements of the amended claims. For a rejection under 35 U.S.C. § 103 to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of Claims 1-21 under 35 U.S.C. § 103(a) over Nodera or Nishihara.

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It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 07-0862 maintained by Assignee.

Respectfully submitted,

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